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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/030,818	06/07/2002	Hans Bruder	396/50809	2416

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EXAMINER

MACARTHUR, VICTOR L

ART UNIT PAPER NUMBER

3679

DATE MAILED: 07/16/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Applicati n No.

10/030,818

Applicant(s)

BRUDER, HANS

Examiner

Victor MacArthur

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 June 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 02 May 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Figure 6 does not show anything “laterally spread open” as described in the specification. Also, figure 9 does not show an “unattractive wedge-shaped space” or the “end disk 24” while the specification seems to indicate that one or the other should be present in figure 9. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7 and 11-16 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 4410157 to Monti.

Regarding claim 1, Monti discloses (fig.3) a supporting profile for a system for erecting structures comprising: longitudinally extending grooves (20) on the outside of the supporting

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profile (14A), which grooves are used for the connection of additional structural parts (40) of a system, a slid-in adapter piece (48) at at least one of open ends of the supporting profile, the adapter piece having a receiving chamber (66), wherein the adapter piece is inserted in guides (24) pointing toward the interior of the supporting profile and is axially held by means of securing devices (54) which are inserted in bores (56) penetrating the guides, wherein a disk-shaped end piece (52), which is adapted (via 48) to the cross-section of the supporting profile, is provided for being placed on at least an open face of the supporting profile and is connected with the adapter piece. Monti does not expressly state that the receiving chamber is for a turnbuckle. However, it is well established that a recitation with respect to the manner in which an apparatus is intended to be employed, *i.e.*, a functional limitation, does not impose any structural limitation upon the claimed apparatus which differentiates it from a prior art reference disclosing the structural limitations of the claim. In re Pearson, 494 F.2d 1399, 181 USPQ 641 (CCPA 1974); In re Casey, 370 F.2d 576, 152 USPQ 235 (CCPA 1967); In re Otto, 312 F.2d 937, 136 USPQ 458 (CCPA 1963). Furthermore, it appears that the receiving chamber of Monti is fully capable of being for a turnbuckle.

As to claim 2, Monti discloses the supporting profile according to claim 1 wherein the end piece (52) is constructed as a formed body with a concave recess (64) which is adapted (via 82) to the external curvature of a round profile.

As to claim 3, Monti discloses the supporting profile according to claim 2, wherein the formed body is provided with a passage opening (66).

As to claim 4, Monti discloses (fig.11) the supporting profile according to claim 1 wherein the end piece (46) is provided with a joint part (32) for the connection (via 12) with additional profiles (16).

As to claim 5, Monti discloses the supporting profile according to claim 4, wherein the joint part includes a first disk (fig.2, first 32) which extends perpendicular to the end piece and has a center bore (fig.2, receiving 34) and includes an additional second disk (fig.2, second 32) which is connected (via 30, 12) with the first disk (first 32) by means of a bolt (34) acting as an axis of rotation and which is equipped with fastening devices (12) for another profile.

As to claim 6, Monti discloses (fig.2) the supporting profile according to claim 5, wherein the second disk is connected (via ref.12) with another end piece.

As to claim 7, Monti discloses (fig.2) the supporting profile according to claim 5, wherein the second disk is provided with a clamping part (28, 36) for the insertion into one of the longitudinally extending grooves of another supporting profile.

As to claim 11, Monti discloses the supporting profile according to claim 10, wherein the end piece has a concave recess (64) adapted (via 82) to an external curvature of a round profile.

As to claim 12, Monti discloses the supporting profile according the claim 11, wherein the end piece has an opening (66).

As to claim 13, Monti discloses the supporting profile according to claim 10, wherein the end piece has a joint (32) for connection (via 12) to another profile (16).

As to claim 14, Monti discloses (fig. 3) the supporting profile according to claim 13, wherein the joint includes a first disk (first 32) which extends perpendicular to the end piece and has a center bore (fig.2, receiving 34), and a second disk (second 32) having a center bore

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(receiving second 34) and being connected (via 30, 12) with the first disk by means of a bolt (one of first or second 34) extending through the center bores and acting as an axis of rotation, the second disk having a fastening device (28) for connection to another profile.

As to claim 15, Monti discloses (fig. 2) the supporting profile according to claim 14, wherein the second disk is connected to another end piece.

As to claim 16, Monti discloses the supporting profile according to claim 14, wherein the second disk has a clamping part (28) that is configured (via 36) for insertion into longitudinal grooves of another supporting profile.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 4410157 to Monti.

As to claim 10, Monti discloses (fig.3) a supporting profile for erecting a structure, the supporting profile comprising: an elongated hollow body (14A) having first and second ends and a longitudinal groove (20) on the outside of the body; an adapter piece (48) inserted into and secured to the first end of the elongated body, the adapter piece having a receiving chamber (66); and a disk-shaped end piece (52) disposed at the first end and connected to the adapter piece, wherein the disk-shaped end piece and adapter piece are formed as one piece. Monti does not

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disclose that the disk-shaped end piece and adapter piece are separate elements fastened together by fasteners. It has generally been recognized that the separation of elements, where removability would be desirable, is a design consideration within the skill of the art. In re Dulberg, 283 F.2d 522, 129 USPQ 348 (CCPA 1961). Accordingly, it would have been obvious to one of ordinary skill in the art to modify the disk-shaped end piece and adapter piece to be separate elements fastened together by fasteners, as such practice is a design consideration within the skill of the art.

Claims 8, 9, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 4410157 to Monti in view of USPN 2538483 to Summers.

As to claim 8, 9, 17 and 18, Monti discloses the supporting profile according to claims 5 or 14, Monti does not disclose that the ends of the bolt receive hemispheres. Summers teaches (col.1, ll.40-50 and figs.1-4) a hemisphere (10) provided for the lateral covering of a disc (fig.2, at base of 15) wherein the hemisphere has a center bore (14) with a thread and, by means of this thread, is screwed onto a thread at the end of the bolt. Summers teaches (col.1, ll.1-5) that hemispheres are beneficial for the purpose of covering unsightly exposed ends of hardware. Therefore it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the bolt of Monti to receive hemispheres, as taught by Summers, for the purpose of covering unsightly exposed ends of hardware. The word "hemisphere" is taken by the examiner to mean "half of a **roughly** spherical body" in accordance with Merriam-Webster's Collegiate Dictionary Tenth Edition.

Response to Arguments

Drawings:

Applicant argues that figure 6 shows that the attachment 16 and clamping piece 17 are laterally spread open by the two clamping screws 21. This is not persuasive since the clamping screws 21 are not even shown in figure 6 and reference characters appear to be designating the same element in figure 6.

Applicant argues that the “unattractive wedge-shaped space” and end disk are shown in figures other than figure 9. This is not persuasive since applicant’s specification indicates that figure 9 contains these elements. Furthermore, the “unattractive wedge-shaped space” is not designated a reference numeral in any figure.

Claims:

Applicant's arguments with respect to the claims as originally submitted have been considered but are moot in view of the new ground(s) of rejection.

Applicant argues that Monti does not show “a receiving chamber for a turnbuckle... as shown in DE-U 29821204”. This is not persuasive since the amendment submitted on 05/02/03 clearly states, “the turnbuckle is not a feature of the claimed invention... the receiving chamber is a feature of claim 1, but the turnbuckle is not” (p.9, para.3) and (the disclosure of DE-U 29821204 is not essential to the description of the turnbuckle.”(p.10, para.5). Furthermore, it is well established that a recitation with respect to the manner in which an apparatus is intended to be employed, *i.e.*, a functional limitation such as “for a turnbuckle”, does not impose any structural limitation upon the claimed apparatus which differentiates it from a prior art reference

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disclosing the structural limitations of the claim. In re Pearson, 494 F.2d 1399, 181 USPQ 641 (CCPA 1974); In re Casey, 370 F.2d 576, 152 USPQ 235 (CCPA 1967); In re Otto, 312 F.2d 937, 136 USPQ 458 (CCPA 1963). Thus, Monti meets the above-mentioned limitation since element (66) is a receiving chamber within the broadest reasonable interpretation of the claim language. If the applicant wishes to amend the claims to positively claim a turnbuckle than such a turnbuckle needs to be described in the specification (not by reference to another patent) as is detailed in the examiners prior office action filed on 12/02/02.

Applicant argues that the plug portion 48 of Monti is neither secured by securing devices nor secured to the bores of guides. This is not persuasive since the above-mentioned limitation is not present in the claims. Rather, claim 1 states “a slid-in adapter piece (Monti, 48) at at least one of open ends of the supporting profile, the adapter piece having a receiving chamber (Monti, 66), wherein the adapter piece is inserted in guides (Monti, 24) pointing toward the interior of the supporting profile and is axially held by means of securing devices (Monti, 54) which are inserted in bores (Monti, 56) penetrating the guides” which is disclosed by Monti within the broadest reasonable interpretation of the claim language as noted above.

Applicant's argument regarding claim 10 is moot in view of the current office action.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor MacArthur whose telephone number is (703) 305-5701. The examiner can normally be reached on 8:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne Browne can be reached on (703) 308-1159. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

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July 2, 2003

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Patent Examiner

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Lynne H. Browne

Supervisory Patent Examiner

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